

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,
Plaintiff,

v.

OSCAR T. RODRIGUEZ,
Defendant.

No. CR-10-72-FVS-2

ORDER DENYING MOTION TO
DISMISS

THIS MATTER comes before the Court without oral argument based upon the defendant's "Motion to Dismiss Based Upon Speedy Trial Delay." He is represented by Douglas D. Phelps. The United States is represented by Russell E. Smoot and Lawrence H. Haskell.

RELIEF REQUESTED

The defendant moves to dismiss the charges that are set forth against him in the Indictment. As authority for his request, he relies upon the Interstate Agreement on Detainers. 18 U.S.C. app. 2, § 2. He argues the United States violated Article III by failing to bring him to trial within 180 days of the date upon which he requested final disposition of pending federal charges.

BACKGROUND

05/10/2010: An Information was filed in Spokane County

1 Superior Court. The defendant was detained in the
2 Spokane County Jail.

3 07/08/2010: An Indictment was filed in United States District
4 Court for the Eastern District of Washington.

5 07/15/2010: The United States lodged a Detainer with the
6 defendant's custodian.

7
8 12/10/2010: The attorney representing the defendant in state
9 court filed a motion requesting a competency
10 evaluation.

11 02/11/2011: Both the Clerk of the federal court and the United
12 States Attorney received letters from the
13 defendant requesting speedy resolution of the
14 pending federal charges.

15
16 03/04/2011: The United States filed a document that is
17 entitled "United States' Notice of Defendant's
18 Request for Writ of Habeas Corpus ad
19 Prosequendum." The United States summarized the
20 procedural histories of the state and federal
21 cases. The United States noted that a competency
22 evaluation had been requested in state court and
23 that the defendant's competence to stand trial in
24 state court was unresolved. The United States
25 suggested appointing counsel to represent the
26

defendant in the federal case.

03/25/2011: A state judge determined the defendant was competent to stand trial.

04/21/2011: The Clerk of the federal court received a second letter from the defendant requesting speedy resolution of the federal charges.

06/07/2011: An attorney was appointed to represent the defendant in the federal case.

06/17/2011: This Court mistakenly determined the defendant was in federal custody.

07/11/2011: This Court conducted a status conference. The Court determined the defendant was not yet in federal custody.

09/07/2011: This Court conducted a second status conference. The Court again determined the defendant was not yet in federal custody.

01/12/2012: Judgment was entered against the defendant in state court based upon his plea of guilty to a state crime. He was sentenced to a term of 57 months confinement in the custody of the Washington Department of Corrections.

01/23/2012: The United States filed a "Motion for Order for Writ of Habeas Corpus ad Prosequendum."

1 01/23/2012: An "Order for Writ of Habeas Corpus ad
2 Prosequendum" was issued by a federal magistrate
3 judge.

4 02/03/2012: The defendant was arraigned in federal court.

5 04/03/2012: The defendant appeared before the Court with
6 codefendant Abraham Rodriguez. Trial was
7 continued until September 14, 2012 so Abraham
8 could obtain an assessment of his competence to
9 stand trial.
10

11 09/13/2012: The defendant again appeared before the Court with
12 codefendant Abraham Rodriguez. A competency
13 hearing was scheduled for October 10th. Trial was
14 continued until December 3rd.
15

16 10/29/2012: The defendant filed a number of pretrial motions,
17 including motions to dismiss and suppress.

18 11/13/2012: The defendant appeared before the Court. A
19 suppression hearing was scheduled for December
20 12th. Trial was continued until January 7, 2013.
21

22 11/19/2012: The suppression hearing was continued until
23 December 14th.

24 **ANALYSIS**

25 The defendant argues his letters of February 11 and April 21,
26 2011, triggered the provisions of the Interstate Agreement on

1 Detainers Act ("IADA"). 18 U.S.C. app. 2, § 2. The IADA consists of
2 nine articles. See *Alabama v. Bozeman*, 533 U.S. 146, 150-51, 121
3 S.Ct. 2079, 150 L.Ed.2d 188 (2001) (hereinafter "*Bozeman*"). The nine
4 articles are set forth in section 2 of Appendix 2 to Title 18 of the
5 United States Code. The defendant principally relies upon Article
6 III:
7

8 Article III gives a prisoner against whom a detainer has
9 been lodged the right to "request" a "final disposition" of
10 the relevant charges, in which case "he shall be brought to
11 trial within one hundred and eighty days" (unless extended
12 by the trial court for "good cause"); otherwise, the
13 relevant "indictment, information, or complaint shall not be
14 of any further force or effect, and the court shall enter an
order dismissing the same with prejudice." Art. III(a),
(d).

15 *Bozeman*, 533 U.S. at 150, 121 S.Ct. 2079 (quoting parts of paragraphs
16 (a) and (d) of Article III).

17 The United States argues that the right conferred by Article III
18 is subject to limitations. According to the United States, only a
19 person who has begun serving a prison term may invoke the right
20 conferred by Article III. As authority, the United States cites
21 paragraph (a), which states in pertinent part:
22

23 **Whenever a person has entered upon a term of imprisonment in**
24 **a penal or correctional institution of a party State, and**
25 **whenever during the continuance of the term of imprisonment**
26 **there is pending in any other party State any untried**
indictment . . . on the basis of which a detainer has been

1 lodged against the prisoner, he shall be brought to trial
2 within one hundred and eighty days after he shall have
3 caused to be delivered to the prosecuting officer and the
4 appropriate court of the prosecuting officer's jurisdiction
5 written notice of the place of his imprisonment and his
6 request for a final disposition to be made of the indictment
7

18 U.S.C. app. 2, § 2, art. III(a) (emphasis added).

8 In order to assess the validity of the United States'
9 interpretation of Article III(a), it is useful to examine Article IV.
10 Paragraph (a) states in pertinent part:

11 The appropriate officer of the jurisdiction in which an
12 untried indictment . . . is pending shall be entitled to
13 have a prisoner against whom he has lodged a detainer **and**
14 **who is serving a term of imprisonment in any party State**
15 made available in accordance with article V(a) hereof upon
16 presentation of a written request for temporary custody or
17 availability to the appropriate authorities of the State in
18 which the prisoner is incarcerated

18 U.S.C. app. 2, § 2, art. IV(a) (emphasis added). In some respects,
19 Article IV(a) is the reverse of Article III(a). Whereas Article
20 III(a) confers a right upon a prisoner against whom a detainer has
21 been lodged, Article IV(a) confers a right upon an officer who has
22 lodged a detainer against a prisoner.

23 Article IV(a) and Article III(a) contain similar language.
24 *Compare* Art. III(a) ("[w]henever a person has entered upon a term of
25 imprisonment in a penal or correctional institution of a party State")
26

1 with Art. IV(a) ("a prisoner . . . who is serving a term of
2 imprisonment in any party State"). Thus, it is instructive to
3 consider the manner in which the circuit courts have interpreted
4 Article IV(a). *Cf. United States v. Nordbrock*, 38 F.3d 440, 444 (9th
5 Cir.1994) (as a general rule, "similar terms appearing in different
6 sections of a statute should receive the same interpretation"). To
7 date, courts have unanimously ruled Article IV(a) does not apply to a
8 pretrial detainee. *United States v. Reed*, 620 F.2d 709, 711 (9th
9 Cir.), *cert. denied*, 449 U.S. 880, 101 S.Ct. 229, 66 L.Ed.2d 104
10 (1980). *See also United States v. Pardue*, 363 F.3d 695, 698 (8th
11 Cir.2004); *United States v. Wilson*, 27 F.3d 1126, 1130 (6th Cir.),
12 *cert. denied*, 513 U.S. 976, 115 S.Ct. 452, 130 L.Ed.2d 361 (1994);
13 *United States v. Muniz*, 1 F.3d 1018, 1025-26 (10th Cir.), *cert.*
14 *denied*, 510 U.S. 1002, 114 S.Ct. 575, 126 L.Ed.2d 474 (1993). Why
15 does Article IV(a) not apply to the pretrial detainee? Courts have
16 relied upon two rationales. One involves policy. The purpose of the
17 IADA is "to minimize the adverse impact of a foreign prosecution on
18 rehabilitative programs of the confining jurisdiction. . . .
19
20

21 [N]either a pretrial detainee nor a parole violator has a sufficient
22 interest in the rehabilitation programs of his confining institution
23 to justify invocation of the Act." *Reed*, 620 F.2d at 711 (internal
24 punctuation and citations omitted). Another rationale arises from the
25 text of the statute. By their terms, "[a]rticles III and IV apply to
26

1 prisoners who are serving a 'term of imprisonment' in a state party to
2 the [IADA]" *Muniz*, 1 F.3d at 1026. While a pretrial detainee
3 is in custody, he has neither been convicted of a crime nor has he
4 begun serving a prison term. Thus, he is not serving "a term of
5 imprisonment" within the meaning of Article IV(a). Article IV(a) does
6 not apply to him.
7

8 What about Article III(a)? Should the phrase "entered upon a
9 term of imprisonment in a penal or correctional institution" (Article
10 III(a)) be interpreted differently than the phrase "serving a term of
11 imprisonment" (Article IV(a))? The defendant has not explained why
12 the two clauses should have different meanings, and the Court can
13 think of no reason why Congress would have intended the two clauses to
14 be interpreted differently. Consequently, the Court concludes
15 Congress intended to limit Article III(a) to a prisoner who has been
16 convicted of a crime and who has begun serving a prison term.
17

18 The Clerk of the federal court received letters from the
19 defendant on February 11 and April 21, 2011. On those dates, he was a
20 pretrial detainee in state court. He had not been convicted of any of
21 the crimes with which he was then charged in state court, much less
22 had he "entered upon a term of imprisonment in a penal or correctional
23 institution[.]" That being the case, he could not avail himself of
24 the protections created by the IADA. His letters of February 11th and
25 April 21st did not trigger the right conferred by Article III(a).
26

1 Judgment was entered against the defendant in state court on
2 January 12, 2012. A federal magistrate judge issued a writ of habeas
3 corpus ad prosequendum on January 23rd. On February 3rd, the
4 defendant was arraigned. He was not brought to trial within 180 days
5 of January 12, 2012; but that is because he and his codefendant
6 requested continuances. Article III(a) expressly permits a court to
7 grant necessary or reasonable continuances. The first proviso of
8 Article III(a) states, "[F]or good cause shown in open court, the
9 prisoner or his counsel being present, the court having jurisdiction
10 of the matter may grant any necessary or reasonable continuance." 18
11 U.S.C. app. 2, § 2, art. III(a). In *United States v. Collins*, 90 F.3d
12 1420, 1428 (9th Cir.1996), the Ninth Circuit recognized that a
13 continuance tolls the speedy trial provisions of Article III(a) when
14 the continuance is granted for good cause shown.
15
16

17 **RULING**

18 The defendant's motion to dismiss under the IADA is denied.
19 Article III(a)'s 180-day deadline did not begin to run during 2011.
20 At the earliest, it began to run on January 12, 2012, viz., the date
21 upon which judgment was entered against the defendant in state court.
22 The defendant was arraigned in federal court on February 3, 2012. He
23 requested his first continuance on April 3rd. The 180-day deadline
24 has been tolled since then. Thus, on the most generous interpretation
25 on the record, 81 days have elapsed under the IADA, i.e., January 12th
26

1 to April 2nd.

2 **IT IS HEREBY ORDERED:**

3 1. The defendant's "Motion to Dismiss Based Upon Speedy Trial
4 Delay" (**ECF No. 355**) is **denied**.

5 2. The period from October 29, 2012 (the date upon which the
6 motion was filed) until December 3, 2012 (the date upon which the
7 motion was resolved) is excluded from the computation of the
8 defendant's speedy trial deadline. 18 U.S.C. § 3161(h)(1)(D).

9 **IT IS SO ORDERED.** The District Court Executive is hereby
10 directed to enter this order and furnish copies to counsel.
11

12 **DATED** this 4th day of December, 2012.

13
14 s/ Fred Van Sickle
15 Fred Van Sickle
16 Senior United States District Judge
17
18
19
20
21
22
23
24
25
26